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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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October 12, 1983

LEGISLATIVE REFERRAL MEMORANDUM

TO:

Legislative Liaison Officer-
Department of Justice
National Security Council
Department of the Treasury
Department of Transportation
Central Intelligence Agency ✓
Department of Defense

SUBJECT:

State draft report on H.R. 380, an "Act to Combat
International Terrorism."

The Office of Management and Budget requests the views of your
agency on the above subject before advising on its relationship to
the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than
FRIDAY, NOVEMBER 4, 1983.

Questions should be referred to Tracey Lawler (395-4710)
the legislative analyst in this office.

Ronald K. Peterson
RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures
cc: G. Jones
D. Taft
F. Seidl



United States Department of State

Washington, D.C. 20520

Dear Mr. Chairman:

You have requested the views of the Department of State on H.R. 380, a bill to amend the Federal Aviation Act of 1958, relating to aircraft piracy, to provide a method for combatting terrorism, and for other purposes, whose short title is an "Act To Combat International Terrorism".

The Department has a number of problems with certain aspects of this bill. Initially, the definition of "international terrorism" found in section 2(a) is inappropriate. The United States has always considered that an offense under the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague Convention), an offense under the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (the Montreal Convention), or a crime under the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (the New York Convention) is an act of terrorism, without any necessary qualification. In addition, the list of treaties which are relevant to a consideration of what constitutes an act of international terrorism is incomplete. Besides the three conventions listed above, the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That Are of an International Significance (the O.A.S. Convention), the Convention on the Physical Protection of Nuclear Material (the I.A.E.A. Convention), and the International Convention Against the Taking of Hostages (the Hostages Convention) are all treaties dealing with terrorist acts to which the United States is a party or signatory.

The international community has struggled for over a decade to develop a definition of "international terrorism" which would adequately cover the field, but has been unable to achieve that goal. The Department supports the approach that has been utilized to date of defining specific acts which can be universally agreed to be international offenses rather than attempting to find an all-inclusive definition which sweeps across the entire spectrum of activity which might be considered "terrorism" by one group or another.

The Honorable
James J. Howard, Chairman,
Committee on Public Works and Transportation,
House of Representatives.

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In addition, the Department has concerns about the suggested definition of "state support of international terrorism" found in section 2(b) of the bill. The requirement that a state "deliberately" perform certain acts sets a standard of conduct that would be almost unverifiable. The definition of the constituent acts also poses a problem. For example, while we certainly would condemn the use of diplomatic facilities to aid terrorism, it would be impossible to prove that such facilities were used for these purposes because of the inviolability of the diplomatic pouch. Also, while a decision not to extradite a person sought for an act of terrorism is regrettable, this outcome may be required by the internal laws of the country affected, e.g., because the requested state does not have an extradition treaty with the requesting state or the person sought successfully argues that he is being sought for a political offense. These definitions are of little use since the bill gives the President wide latitude in his handling of international terrorism.

Section 3 would require the President to report every six months (or sooner, if U.S. citizens are involved) on "those incidents he determines to be acts of international terrorism" [emphasis added]. Section 4 similarly requires the President to semi-annually "consider which, if any, states have demonstrated a pattern of support for acts of international terrorism. If the President determines that any states so acted" he must also report to the Congress. [Emphasis added.] These reporting requirements place an undue burden on the President and, in the case of Section 4, duplicate existing legislation in part.

The reports to the Congress would in many cases have to be based on information received from other governments or which for some reason was classified. Such information could not be made public, of course. Yet sections 3 and 4 of the bill require that a classified report of all incidents of international terrorism, a huge undertaking considering the thousands of incidents involved, and a classified report on those states which support international terrorism be made available to the Congress as a whole. The President has never accepted a requirement to divulge classified information, even to the Congress, and would be understandably hesitant to make such information available on such a wide scale.

Section 5 of the bill, which appears to be directed to increasing substantively the President's authority to combat acts of international terrorism, really is surplusage.

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Provisions of law already exist under the Foreign Assistance Act (section 620A), the Arms Export Control Act (section 3(f)), and the Export Administration Act of 1979 (section 6(i)) allowing the President to deal with terrorism. This section would add nothing to the mechanisms which already exist to deal with terrorism.

The mandatory public identification of "unsafe" foreign airports as would be required in section 6 might direct terrorists to those airports. In addition, such identification would hamper efforts to work cooperatively with the involved foreign governments in training and exchange efforts designed to remedy deficient security. Authority to identify airports as "unsafe" should be a permitted, but not mandatory, power of last resort. The Department of State defers to the Department of Transportation on the remaining portions of sections 6, 7 and 8 of the bill.

Similarly, section 9 of the bill, which relates to explosive taggants, is best dealt with by the Department of Justice and Treasury and the Department of State defers to those Departments' views on the subject.

The Department of State would point out in reference to sections 10 and 11 of the bill, which deal with aircraft sabotage and aircraft piracy, that the Department, joined by the Department of Justice and the Federal Aviation Administration, last June sent the Office of Management and Budget legislation designed to implement the Montreal Convention on Aircraft Sabotage. That legislation to implement the Montreal Convention, which was ratified by the United States over 10 years ago, is similar in certain respects to these sections of the bill. The Department believes that separate legislation implementing the Montreal Convention would be the most expeditious and effective way to deal with this important issue. Therefore, we do not support inclusion of such legislation as part of a broader anti-terrorism bill.

Finally, the Department believes that section 12 is unnecessary since there already exist a variety of international fora in which efforts are under way to enhance law enforcement, crisis management and international cooperation to combat terrorism. This Administration has repeatedly expressed its concerns about international terrorism to the Congress and in those international fora. The United States seeks the maximum cooperation in combatting terrorism, both on a legal and on a law enforcement level, from other countries who share our concerns. The President, in the

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exercise of his constitutionally granted power to conduct foreign relations, evaluates the areas in which agreements can be reached and determines the priorities to be given to individual projects. Section 12 can no more than indicate certain areas where agreements would be desired and as such is only hortatory.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

Alvin Paul Drischler
Acting Assistant Secretary
Legislative and Intergovernmental Affairs

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